

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Sacramento, California

**July 19, 2023 at 9:00 a.m.**

1. [18-25370-E-13](#)  
[DPC-9](#)

**JESSE ORTIZ**  
**Peter Macaluso**

**CONTINUED MOTION TO DISMISS**  
**CASE**  
**5-8-23 [205]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 8, 2023. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is xxxxxxx.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Jesse Ortiz ("Debtor"), is delinquent on plan payments.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on June 7, 2023. Dckt. 209. Debtor states the delinquency will be cured prior to the hearing date.

**DISCUSSION**

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

## **Delinquent**

Debtor is \$16,779.22 delinquent in plan payments, which represents multiple months of the \$8,319.22 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **June 21, 2023 Hearing**

Counsel for the Debtor reported that Debtor has received a large payment from a client and the cure amount is in process. In light of the large amount to be cured, the Trustee agreed to a continuance of the hearing.

## **July 19, 2023 Hearing**

At the hearing, **XXXXXXXXXXXXXXXXXX**.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXXXXX**.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is ~~granted, and the case is dismissed.~~**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Ginger Rose Wright and Valitino Navaille Wright ("Debtor"), is delinquent in Plan payments.

## DEBTOR'S RESPONSE

Debtor filed a Response on July 5, 2023. Dckt. 40. Debtor states the delinquency will be cured prior to the hearing date. *Id.* Debtor states that they fell behind on Plan payments due to unexpected vehicle repairs. Declaration ¶ 2, Dckt. 41. Debtor further states that after Trustee's motion was filed Debtor made a payment on June 22, 2023 of \$890.00, which has been completed, and another payment on July 5, 2023 of \$225.00, which is processing on the TFS payment portal. *Id.* ¶¶ 3-4; *see also* Exhibits, Dckt. 42.

## DISCUSSION

### Delinquent

~~Debtor is \$890.00 delinquent in plan payments, which represents multiple months of the \$225.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).~~

~~Unfortunately for Debtor, a promise they paid is not evidence that resolves the Motion.~~

~~Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

3. [20-23172-E-13](#)      **SONDA CHARLTON**      **MOTION TO DISMISS CASE**  
[DPC-3](#)      **Peter Macaluso**      **6-16-23 [83]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b><del>The Motion to Dismiss is granted, and the case is dismissed.</del></b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Sonda L. Charlton (“Debtor”), is delinquent in Plan payments.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 5, 2023. Dckt. 87. Debtor states the delinquency will be cured prior to the hearing date.

## DISCUSSION

### Delinquent

Debtor is \$1,880.90 delinquent in plan payments, which represents less than one month of the \$1,883.60 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

~~Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Amended Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Amended Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Michael Clark and James Ling (“Debtor”) are delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on July 5, 2023. Dckt. 35. Debtor states they will file a Modified Plan prior to the July 19, 2023 hearing date.

### **Lack of Certificate of Service**

Although Debtor timely filed an Opposition to Trustee’s motion, Debtor is required to provide a certificate of service to Trustee and all other parties in interest. Local Bankruptcy Rule 9014-1(d)(1). Debtor has failed to file a certificate of service with his Opposition to Trustee’s motion. It is not clear whether Trustee properly notice of Debtor’s Opposition.

## **DISCUSSION**

### **Delinquent**

Debtor is \$14,003.04 delinquent in plan payments, which represents multiple months of the \$5,548.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Amended Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Amended Motion to Dismiss is granted, and the case is dismissed.

5. <a href="#"><u>18-25114-E-13</u></a> <a href="#"><u>DPC-3</u></a>	<b>DAVID HOWERTON</b> <b>Peter Macaluso</b>	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> <b>5-8-23 [115]</b>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 8, 2023. By the court’s calculation, 44 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The hearing on the Motion to Dismiss is <span style="color: red;">XXXXXXXXXX</span>.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, David Howerton (“Debtor”), is in default with respect to the plan.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on June 7, 2023. Dckt. 119. Debtor states a new plan will be filed.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,929.46 delinquent in plan payments, which represents multiple months of the \$2,040.86 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a new Plan is not evidence that resolves this Motion.

The Trustee reports that the delinquency has increased. Debtor’s counsel reports that the Debtor has passed away and his representative want to complete the Plan.

The Debtor Representative will make an immediate \$4,000 payment and are in the process of doing a refinance to pay off the Plan.

The parties agreed to a continuance.

### **July 19, 2023 Hearing**

At the hearing, **xxxxxx**.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **xxxxxxxx**.



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Lea Chase ("Debtor") is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on June 30, 2023. Dckt. 41. Debtor states a payment of \$3,925.00 had not been processed yet at the time Trustee filed his motion. Debtor made a payment of \$4,000.00 on June 30, 2023. *Id.* Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,679.48 delinquent in plan payments, which represents multiple months of the \$3,875.56 plan payment. Before the hearing, two additional plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court notes that Trustee concedes that the court may determine that conversion to a Chapter 7 case, rather than dismissal, may be in the best interest of the creditors and the estate. No creditors have sought conversion and the court concurs with the Trustee's analysis that dismissal is appropriate.

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Reconvert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Reconvert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is XXXXXXX.**

This Motion to Reconvert the Chapter 13 bankruptcy case of Donald Johnson ("Debtor") has been filed by David Cusick ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor has failed to file a new plan and there are non-exempt assets listed to be no less than \$300,100.00.

## DEBTOR'S RESPONSE

Debtor filed an Response on June 29, 2023. Dckt. 241. Debtor states the following:

1. Remaining Claims - Debtor states there are two remaining claims in the case: Creative Judgement Solutions and the Debtor's spouse, Caraly Johnson.

- a. Creative Judgement Solutions - Debtor contends Creative Judgement Solutions has been paid as a result of the Motion to Pay being granted on May 16, 2023.
- b. Ms. Johnson - Debtor believes he and Ms. Johnson have reached an agreement with their assets and debts:
  - i. Ms. Johnson will retain insurance proceeds from the loss of their home, as it is only titled in her name, and Ms. Johnson will quitclaim ownership of the property to Debtor.
  - ii. Ms. Johnson will receive \$59,696.32 from the \$249,033.06 that the Trustee is currently holding, in return, Ms. Johnson will withdraw her claim.
- 2. With all administrative fees and claims paid, Debtor does not find a reason to reconvert to a Chapter 7. Rather, Debtor finds the appropriate resolution is dismissal.

At the hearing, ~~XXXXXXXXXXXX~~

## APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

## DISCUSSION

### Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 10, 2023. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Trustee contends there are non-exempt assets no less than \$300,100.00. Trustee cannot determine the exact amount based on some assets with unknown values in their Schedule A/B. *See* Schedule A/B, Dckt. 1. Trustee believes there may be additional assets that the Chapter 7 Trustee can liquidate. Trustee believes that a re-conversion to a Chapter 7 may be in the best interest of creditors or the estate because there is non-exempt equity to be realized in the event of a re-conversion to a Chapter 7.

This case presents an interesting situation where the bankruptcy process and forum may well have provided the vehicle for Debtor and his creditors, including his ex-spouse, the opportunity to bring other court litigation to a conclusion.

While a bankruptcy case can provide some very "creative" judicial space to reach rationale, economic resolutions, in the Chapter 13 case the law does require the Debtor to prosecute a bankruptcy plan. It may well be that in this case a settlement between the Debtor and his ex-spouse may result in there no long being a need for this case and it can be dismissed, such is not a "plan" as required in a Chapter 13 case.

It may be that the diligent prosecution of this case, at this time, will be a motion to approve compromise (assuming the Parties want an order documenting their settlement), or the dismissal of the case and documentation of the settlement in a State Court proceeding, or no court approval.

At the hearing, **XXXXXXX**

~~———— Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case under Chapter 7.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert the Chapter 13 case filed by David Cusick (" the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Convert is **XXXXXXX**.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 22, 2023. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The hearing on the Motion to Dismiss is granted and this Bankruptcy Case is dismissed.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Frankie Hayduk ("Debtor"), has failed to prosecute this case.

#### **DISCUSSION**

#### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 28, 2023. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court notes that Debtor filed a Motion to Approve Settlement Agreement on May 23, 2023. Debtor filed a skeletal Chapter 13 Petition in December 2022 listing an unknown amount for “Potential Compensation for Damages from 2020 Mill Fire in Weed, California” in Schedule A. Dckt. 10. Debtor was offered a gross settlement of \$35,000.00 and amended the A/B Schedule. Dckt. 60. At the June 6, 2023 hearing, Debtor’s Motion was denied without prejudice and Debtor stated a new motion would be prepared addressing any issues. Although Debtor appears to be prosecuting issues regarding the settlement, Debtor has failed to put forth any plan since their plan’s denial of confirmation.

On June 13, 2023, the court entered its order denying without prejudice the Motion to Approve Compromise. Order; Dckt. 66.

However, counsel for Debtor appeared at the hearing, advising the court that a new motion to approve compromise will be filed.

Based on the apparent prosecution of a settlement, the court continues the hearing on the Motion to Dismiss.

### **July 19, 2023 Hearing**

A review of the Docket on July 15, 2023, indicates that no motion to approve a compromise has been filed. No amended plan has been filed and Debtor is not seeking confirmation of a Chapter 13 plan.

This case was filed on December 13, 2022. While receiving the benefits of Chapter 13, Debtor has chosen not to fulfill Debtor’s obligations.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert the Chapter 13 case filed by David Cusick (“ the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted and the Bankruptcy Case is Dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 27, 2023. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Joanne Davis (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file a new plan.

## DISCUSSION

### Delinquent

Debtor is \$3,770.00 delinquent in plan payments, which represents multiple months of the \$1,314.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).



## No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 25, 2023. Order, Dckt. 88. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

10. <a href="#">21-23849</a> -E-13 <a href="#">DPC-2</a>	PAUL-MATTHEW FERNANDES Thomas Amberg	MOTION TO DISMISS CASE 6-21-23 [ <a href="#">60</a> ]
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, person who requested special notice, and Office of the United States Trustee on June 21, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Paul-Matthew Santos Fernandes (“Debtor”), is delinquent in Plan payments.

## **DEBTOR’S RESPONSE**

Debtor filed a Response on July 5, 2023. Dckt. 64. Debtor’s attorney states that they have not been able to contact Debtor. At this point, Debtor has no basis to oppose the Motion.

## **DISCUSSION**

### **Delinquent**

Debtor is \$13,800.00 delinquent in plan payments, which represents multiple months of the \$6,900.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Robert Albert Lewis (“Debtor”), is delinquent in Plan payments.

## DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 21, 2023. Dckt. 29. Debtor states the delinquency will be cured prior to the hearing date.

## DISCUSSION

### Delinquent

Debtor is \$2,260.00 delinquent in plan payments, which represents multiple months of the \$770.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

12. [20-24952-E-13](#)  
[DPC-1](#)

**TERRY THOMPSON AND  
MELISSA MAST  
Stephan Brown**

**MOTION TO DISMISS CASE  
3-10-23 [\[24\]](#)**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 10, 2023. By the court’s calculation, 61 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

## **PRIOR HEARING AND ORDER**

This case was dismissed on May 15, 2023, Dckt. 40. The civil minutes from the hearing on the Motion to Dismiss are below:

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Terry Lee Thompson and Melissa Kay Mast (“Debtor”) is delinquent in Plan payments.

### **Delinquent**

Debtor is \$7,184.11 delinquent in plan payments, which represents multiple months of the \$1,450.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

Civil Minutes, Dckt. 39.

## **ORDER VACATING MOTION TO DISMISS**

On May 24, 2023, the court granted Debtor’s Motion to Vacate the Order Dismissing Case. Dckt. 47. The court reset Trustee’s Motion to Dismiss for July 19, 2023.

## **DEBTOR’S OPPOSITION TO THE RESET MOTION TO DISMISS**

Debtor filed an Opposition on July 5, 2023. Dckt. 52.

Debtor states:

1. They will file amended Schedules I & J to show plan feasibility prior to hearing

On July 6, 2023, Debtor filed Amended Schedules I & J indicating Debtor’s combined monthly income is \$12,306.19, and Debtor’s combined expenses include \$10,856.19. Dckt 54. Debtor calculates their monthly net income as \$1,450.00. *Id.*

2. They will file a Motion to Confirm Second Modified Plan prior to hearing.
3. They will be current under the second modified plan as of the date of hearing.

## **DELINQUENT**

Debtor is \$7,184.11 delinquent in plan payments, which represents multiple months of the \$1,450.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).I

Unfortunately for Debtor, a promise to file a Second Modified Plan is not evidence that resolves this Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 6, 2023. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is XXXXXXX.**

This Motion to Convert the Chapter 13 bankruptcy case of Daniel Kevin Snook and Sharon Lynne Azevedo ("Debtor") has been filed by David Cusick ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

1. the Debtor, David Kevin Snook, ("deceased Debtor") is deceased.
2. Debtor is delinquent on plan payments.

#### DEBTOR'S RESPONSE

Debtor Sharon Lynne Azevedo filed a Response on March 13, 2023. Dckt. 54. Debtor states debtor Sharon Lynne Azevedo ("Debtor Sharon") has filed a motion for substitution on March 10, 2023. Debtor Sharon further states she has obtained Court approval to employ a real estate agent in order to sell the real property located at 8252 Mercer Way, Fair Oks, CA 95628 to pay off all claims of the chapter 13 case.

## TRUSTEE'S REPLY TO DEBTOR

Trustee filed a reply on March 16, 2023. Dckt. 71. Trustee does not believe the motion to substitute will resolve the issues in the motion to dismiss but is not opposed to a continuance. If the court agrees to continue the Motion, Trustee requests the matter be continued to the May 10, 2023 calendar at 9:00 a.m.

### APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[.]; [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

### DISCUSSION

#### Death of Debtors

Under 11 U.S.C. § 1016, a Chapter 13 case may be dismissed upon death or incompetency of a debtor. This is largely due to Chapter 13 plans being dependent on the debtor’s future earnings. 9 Collier on Bankruptcy P 1016.04 (16th 2021). However, if further administration is possible and in the best interest of the parties, the case may proceed and concluded in the same manner, so far as possible, as though death or incompetency had not occurred, with the court appointing a personal representative successor to the late debtor. 11 U.S.C. § 1016.

It is unlikely that the remaining debtor will be able to carry out the plan with only social security income. It is possible however with the sale of the home proposed in Debtor’s response that Debtor is able to cure any delinquency’s and continue with the plan.



## **Delinquent**

Debtor is \$5,200.00 delinquent in plan payments, which represents multiple months of the \$2,600.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

It is possible that Debtor is able to cure the delinquency with the sale of the property at 8252 Mercer Way, Fair Oaks, CA 95628. Debtor has taken the first step to making the sale as she has hired a real estate agent with court approval. Declaration, Dckt 55.

At the hearing, counsel for the Debtor has filed the request for substitution and the home is on the market. The Trustee concurred in the request for a continuance.

## **July 19, 2023 Hearing**

At the hearing **XXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert the Chapter 13 case filed by David Cusick ( "Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Convert is **XXXXXXXXXXXX**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 18, 2023. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXXXXXXX</span></b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Errol Quock and Irene Chi-Wia Wong ("Debtor"), has no Plan Pending.
2. Trustee recommends dismissal based on the \$320,131.00 of non-exempt equity.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 8, 2023. Dckt. 65. Debtor states a Modified Plan will be filed and requests the Motion to Dismiss be continued six weeks out.

## DISCUSSION

### No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 29, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a new plan is not evidence that resolves this Motion.

The Plan was filed on February 22, 2023, and the Motion to Confirm will be filed by the February 27, 2023. The Trustee concurred with Debtor's request for a continuance.

### **Trustee's Status Report**

Trustee filed a status report on May 2, 2023. Dckt. 73. Trustee indicates an Amended Plan has been filed, however, no motion to confirm has been filed nor has the Plan been served.

### **FILING OF AMENDED PLAN NO MOTION TO CONFIRM**

Debtor filed another Amended Plan on April 10, 2023. Dckt. 72. However, Debtor has not filed a Motion to Confirm the Amended Plan nor has Debtor served the Plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, Debtor's counsel explained some of the impediments to moving forward with a plan, but stated that those issues have been addressed and that Debtor and counsel will diligently move forward.

The Trustee concurred with the request for a continuance so Debtor can move forward in diligently prosecuting this case.

### **July 19, 2023 Hearing**

On May 14, 2023, the court granted Debtor's Motion for Authorization to sell the Mercer Way Property. Order, Dckt. 88. All net proceeds of the sale, after payment of the costs and expenses of the sale, and claims secured by the Property are ordered to be paid to the Chapter 13 Trustee.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXXXXXXXX**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 28, 2023. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is XXXXXX**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Mark Haynes ("Debtor"), is delinquent in Plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on April 20, 2023. Dckt. 145. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,636.00 delinquent in plan payments, which represents multiple months of the \$1,909.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **May 10, 2023 Hearing**

At the hearing, counsel for the Debtor stated that the Debtor, who is a real estate agent, has four deals that are to close this month. Debtor at the hearing stating that he is ready to cure the default this week.

In light of the payment sources and Debtor's representation that he will have the defaults promptly cured, the Trustee concurred with the request for a continuance.

### **June 21, 2023 Hearing**

As of the court's June 16, 2023 review of the Docket, nothing further has been filed by the Debtor.

At the hearing, counsel for the Trustee reported that Debtor's delinquency is in excess of \$7,000.00, but payments are scheduled in June, which if paid, the delinquency will be substantially reduced.

The payments are in process and the Trustee agreed to a continuance.

### **July 19, 2023 Hearing**

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXXXXXXXXX**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 8, 2023. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is XXXXXXXXXXXX**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Eufemio Ordonia Seguban Jr. and Liza Frani Seguban ("Debtor"), is delinquent in Plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on June 7, 2023. Dckt. 138. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,740.00 delinquent in plan payments, which represents multiple months of the \$685.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

The Trustee reports that the Debtor is now three months in default.

Debtor requests a continuance, citing to a death in the family, a hurricane in the Philippines, and the travel to the funeral.

In reviewing Supplemental Schedule J, it appears that Debtor's defaults may be related to an inaccurate and unrealistic set of expenses on Supplemental Schedule J. Dckt. 92. First, though stating under penalty of perjury on Supplemental Schedule J that Debtors' then 25 and 26 year old children were dependants and Debtors had a four adult household, Debtor's counsel recanted, stating that they are "not really dependant, and the wrong box must have been checked.

Going to Amended Schedule J filed on November 18, 2019, Debtor listed two adult children, stating that they ages were 24 and 25, as dependants. Dckt. 65.

Going back to an earlier Amended Schedule J filed on February 18, 2019, Debtor listed two adult children, stating that their ages were 24 and 25, as dependants. 29.

When this case was filed on December 26, 2018, Debtors' Original Schedule J list two adult children as dependants, stating that their ages were 24 and 25 in 2018. Dckt. 1.

By 2023, Debtors' "dependant children" who they state "really are not dependants but just live in Debtors' house" would be 29 and 30 years old by 2023.

In additional to inaccurately stating under penalty of perjury that their adult children were "dependants," Debtors' Supplemental Schedule J lists unrealistic expenses for even two adults. These include:

- A. Food and Housekeeping Supplies.....(\$300)
  - 1. Allowing (\$50) a month for Supplies, that leaves only \$125 per person for food.
    - a. Over a 30 day month, that is only (\$1.38) per person per meal. Even in 2020 this is a grossly unrealistic food expense.
- B. Transportation - fuel, repairs, maintenance, registration for two vehicles.....(\$230)
  - 1. Allowing (\$50) for repairs/maintenance, that leaves \$90 a month for fuel for each vehicle.
    - a. With a gas price of \$4.50 a gallon, that allows for purchasing of 20 gallons of gasoline a month.
      - (1) With 5 gallons a week to drive, and assuming the vehicle gets 25 miles to the gallon, each debtor could drive only 17.85 miles a week.
- C. Electricity, Heat, Natural Gas.....(\$75)

1. It is unclear how, even in 2020, \$75 a month for electricity and gas is reasonable or realistic.

D. Home repair and maintenance.....(\$20)

1. The court did not find credible Debtor's counsel argument that during bankruptcy debtors do not make repairs to their home (for which they are paying a mortgage) and allow them to run down and fall into disrepair over the five years of a bankruptcy plan.

Though the Debtors appear to have some "challenges" in providing testimony and information under penalty of perjury, the Trustee agreed to the request for a continuance.

**July 19, 2023 Hearing**

At the hearing **XXXXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXXXXXXX**



Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 16, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXXXXX</span></b>
---

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Anthony Tokuno and Renee Tokuno ("Debtor"), is delinquent on plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on June 6, 2023. Dckt. 77. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

### **Delinquent**

Debtor is \$8,217.62 delinquent in plan payments, which represents multiple months of the \$4,173.71 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for the Trustee reports that the delinquency has grow to more than \$10,000. A \$3,000 TFS payment is scheduled.

Counsel for Debtor requests a conditional order of dismissal, that insurance payments for his home care business have been delayed, but the money has been received and payment to the Trustee is in process. The Trustee agreed to a continuance of the hearing rather than a conditional order.

**July 19, 2023 Hearing**

At the hearing **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXXXXXXXX**

18. <a href="#"><u>23-21366-E-13</u></a> <a href="#"><u>DPC-2</u></a>	<b>PATRICIA SHERRON</b> <b>Pro Se</b>	<b>MOTION TO DISMISS CASE</b> <b>6-21-23 [28]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Patricia Sherron (“Debtor”), has made no plan payments to date.
2. No meeting of the creditors has been successfully held to date.

## **DISCUSSION**

### **No Plan Payments Made / Failed to Commence Plan Payments**

Debtor did not commence making plan payments and is \$2,246.00 delinquent in plan payments, which represents one month of the \$2,246.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

### **Failure to Conduct § 341 Meeting of Creditors**

Debtor appeared at the Meeting of Creditors held pursuant to 11 U.S.C. § 341, however, Debtor indicated they will be dismissing the case. Therefore, the meeting was not conducted. Failure to conduct the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 29 and 30, 2023. The court computes that 20 and 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on June 23, 2023.

**The Order to Show Cause is sustained, and the case is dismissed.**

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<b>The Motion to Dismiss is <span style="color: red;">xxxxxxx</span> .</b>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Shawn Scott Dickinson and Monique Deneé Dickinson ("Debtor"), is delinquent in Plan payments.

#### **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on July 7, 2023. Dckt. 73, 79. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 80.

A review of Debtor's Declaration in support of Confirmation provides the following testimony:

1. Debtor requests the court modify the Plan pursuant to 11 U.S.C. § 1329 and Local Bankruptcy Rule 3015-1(d)(2).
2. Debtor became delinquent in the amount of \$3,874.92 as of June 16, 2023.
3. Debtor has made payments to cure part of the delinquency, however, they have not cured the entire amount.
4. Debtor requests modifications to the Plan to catch up on the remaining delinquency.

5. Plan payments shall increase from \$1,760.00 to \$2,081.63 beginning July 25, 2023 for the remainder of the Plan. All other terms remain the same.

Declaration, Dckt. 80. Such testimony does not provide evidence to satisfy the requirements of 11 U.S.C. § 1325 and § 1322. Debtor does not explain why they became delinquent and how they will be able to maintain payments on the proposed Plan, which calls for higher monthly payments, when they were unable to stay current on the original Plan.

The court notes Debtor has not filed Supplemental Schedules indicating their current income and expenses. The court only has Debtor's original schedules filed on the petition date, which date back to 2020.. Schedules I & J, Dckt. 1. The original Schedules indicate Debtor's net income is \$3,193.12. *Id.* If Debtor's income remains unchanged, Debtor has sufficient income to fund the Plan. Additionally, Debtor is proposing a 100% plan, therefore, creditors do not appear prejudiced. Plan, Dckt. 79.

At the hearing, ~~XXXXXXXXXXXX~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is ~~XXXXXXX~~.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 4, 2023. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXX</span>.</b>
---

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Lillian Deaner ("Debtor"), is delinquent in Plan payments.

## **DEBTOR'S "OBJECTION"**

Debtor filed an "Objection" on June 7, 2023. Dckt. 107. The court will treat Debtor's Objection as an Opposition. Debtor states the delinquency will be not be cured prior to the hearing date, but requests four months to bring the Plan current until they either refinance or sell their residence. Debtor states they can make these increased payments from funds they did not pay Trustee and from an expected busy summer for their business. Declaration, Dckt. 108.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,846.28 delinquent in plan payments, which represents multiple months of the \$2,430.83 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

## June 21, 2023 Hearing

At the hearing, counsel for the Trustee reported on some incorrect information that was communicated to Debtor and Debtor's counsel reported some necessary expenses that have arisen for the Debtor. The Parties agreed to continue the hearing.

## July 19, 2023 Hearing

At the hearing, **XXXXXXXXXXXXXXXXXX**.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXXXXX**.

22. [21-21780-E-13](#)  
[DPC-1](#)

KEVIN HAYES  
Nikki Farris

**MOTION TO DISMISS CASE**  
**6-16-23 [23]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

-----  
Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---



The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Kevin C Hayes (“Debtor”), is delinquent in Plan payments.

## **DEBTOR’S REPLY**

Debtor filed a Reply on July 6, 2023. Dckt. 27. Debtor states that an amended plan will be filed prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,652.00 delinquent in plan payments, which represents multiple months of the \$2,326.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file an amended plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) filed an opposition on July 10, 2023. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXX</span> .</b>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Aaron Steven Joseph Mcconville ("Debtor"), has engaged in unreasonable delay that is prejudicial to creditors because Debtor does not have a plan set for confirmation. Trustee states that although Debtor filed an amended plan on June 5, 2023, the amended plan was not served on creditors (or at least no proof of service was filed with the court) and Debtor has not filed a Motion to Confirm, Notice of Hearing, and Declaration as required by the Local Bankruptcy Rules.

#### DEBTOR'S RESPONSE

Debtor filed a Response on July 10, 2023. Dckt. 35. Debtor states that they have filed a new plan and are current in plan payments and able to make plan payments. Debtor requests that the court not dismiss the case. However, Debtor's Response is procedurally deficient because there is no Certificate of Service or declaration in support of the Motion to Confirm.

#### FILING OF AMENDED PLAN

Debtor filed an Amended Plan on July 10, 2023. Dckt. 36. The court has reviewed the Motion to Confirm the Amended Plan. The basic terms of the Chapter 13 Plan attached to the Notice of Motion are (identified by paragraph number in the Plan):

- 2.01. Monthly Plan payment by Debtor of \$300.00
- 2.03 Duration of Plan is 36 months.
- 3.07 Class 1 Secured Claims, section is blank.
- 3.08. Class 2 Secured Claims, Creditor Jefferson Capital, \$300/month payment.
- 3.09. Class 3 Secured Claims, section is blank.
- 3.10. Class 4 Secured Claims, section is blank.
- 3.12. Class 5 Priority Unsecured Claims, section is blank.
- 3.13. Class 6 Unsecured Claims, section is blank.
- 3.14. Class 7 General Unsecured Claims, section is blank.
- 6.01. Vesting of Property of the Estate on Confirmation, section is blank.

Dckt. 36.

In reviewing the Proofs of Claim filed, sixteen (16) creditors have filed claims. All are filed as unsecured claims other than the claim of Jefferson Capital Systems, LLC for (\$16,448.14). POC 14-1.

On Amended Schedule I, Debtor's gross monthly wages/salary is \$6,300.00. After taxes and insurance, his take-home income is \$4,802. Dckt. 19. On Amended Schedule J, Debtor's monthly expenses for a family of one adult and two children are stated to be (\$3,715.00), which yields a projected disposable income of \$1,087 a month. Dckt. 20. Included in the monthly expenses are rent or mortgage payment. In reviewing the expenses, it appears that many are substantially understated (such as \$100 a month for food and housekeeping supplies).

#### **No Motion to Confirm Filed**

The Pro Se Debtor has filed a Notice of Motion to Confirm form with the proposed plan attached. Dckt. 36. However, no Motion to Confirm has been filed.

#### **No Certificate of Service Filed with Motion to Amend**

Debtor did not file a Certificate of Service. A Certificate of Service is required by Local Rule 7005-1. Without proof of service, it is unclear to the court whether the Amended Plan was, in fact, served on the required parties.

#### **No Declaration Filed in Support of Motion to Amend**

Debtor did not file a declaration in support of the Amended Plan and Motion to Confirm. Evidence is required to show the Amended Plan satisfies the requirements of 11 U.S.C. §§ 1325 and 1322. Debtor has not demonstrated how they will be able to make \$300 in monthly plan payments.

Without a declaration, there is no evidence that Debtor will be able to make the monthly plan payments. Debtor should have been aware of the requirement to file these documents because Trustee specifically pointed out this issue in this Motion, regarding the procedural defects with their prior Amended Plan.

### **Prior Cases Filed by Debtor**

Debtor has filed several other recent cases, one each in 2017, 2019, and 2023. In each of these he has attempted to prosecute these Chapter 13 cases in pro se. Each was dismissed within six months of being filed.

At the hearing, **XXXXXXX**

~~\_\_\_\_\_ Cause has been shown pursuant to 11 U.S.C. § 1307(c) to dismiss this case. The Motion is granted, and the case is dismissed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~\_\_\_\_\_ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~\_\_\_\_\_ The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~\_\_\_\_\_ **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Jesus Avila (“Debtor”), is delinquent in Plan payments.

## **DEBTOR’S RESPONSE**

Debtor filed a Response on June 29, 2023. Dckt. 62. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,400.00 delinquent in plan payments, which represents multiple months of the \$520.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

25. [18-23297](#)-E-13  
[DPC-3](#)

ROWENA GARCIA  
Kristy Hernandez

MOTION TO DISMISS CASE  
6-16-23 [\[53\]](#)

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----  
Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <del>XXXXXXX</del>.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Rowena Morales Garcia (“Debtor”), is delinquent in Plan payments.

#### DEBTOR’S REPLY

Debtor filed a late Reply on July 7, 2023. Dckt. 58. Debtor states that Debtor fell behind on Plan payments because she was under the impression that she had completed the 60-month Plan obligation; however, Debtor subsequently realized that the case is slightly overextended as required to pay off unsecured creditors at 100%. *Id.* Debtor further states that she will be current on Plan payments by the hearing date. *Id.*

## DISCUSSION

### Delinquent

Debtor is \$1,466.00 delinquent in plan payments, which represents multiple months of the \$733.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise she paid is not evidence that resolves the Motion.

The sixty (60) month term of the Plan have been concluded, it appears that the Debtor needs to make a final lump sum payment of \$2,199.00 to complete the Plan.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXX**.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is ~~granted, and the case is dismissed.~~**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Jay Andrew Smith (“Debtor”), is delinquent in Plan payments.

## **DEBTOR’S RESPONSE**

Debtor filed a Response on July 5, 2023. Dckt. 92. Debtor states the delinquency will be cured prior to the hearing date. *Id.* Debtor states that they have sold a piece of real property and a hearing on the sale is scheduled for July 11, 2023, and that proceeds from the sale will be sufficient to get Debtor current on Plan payments and pay off the entire Chapter 13 Plan. *Id.* In the event that the sale is delayed, the Debtor requests that Trustee’s Motion to Dismiss be continued to allow the sale to be completed and the Plan payments made. *Id.*

## **DISCUSSION**

### **Delinquent**

Debtor is \$10,517.42 delinquent in plan payments, which represents multiple months of the \$4,720.95 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.



Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is ~~granted, and the case is dismissed.~~

27. [20-22499-E-13](#)      **EDGAR/DULIAMARIA AGUILAR**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Paul Bains**      **6-16-23 [62]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----  
Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <del>granted, and the case is dismissed.</del></b>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Edgar Eduardo Aguilar and Duliarmaria Aguilar (“Debtor”), is delinquent in Plan payments.

## DEBTOR'S RESPONSE

Debtor filed a Response on July 5, 2023. Dckt. 66. Debtor states the delinquency will be cured prior to the hearing date. *Id.* Debtor states that they made a payment of \$4,060.00 that posted on June 29, 2023, that they have two payments totaling \$8,716.00 that are pending, and that they will submit another payment on July 13, 2023 in the amount of \$4,060.00, which will make them current on Play payments. *Id.*; *see also* Declaration, Dckt. 67; Exhibit, Dckt. 68.

On July 13, 2023, Debtor filed a Supplemental Declaration, in which testimony is provided stating that a \$4,060.00 TFS Payment was scheduled on July 13, 2023. Dckt. 70. A copy of a MoneyGram receipt is provided as Supplemental Exhibit B; Dckt. 71.

### Substantial Cure Payments Made by Debtor

What does not appear to have been explained is how the Debtor has such substantial cash to schedule a TSP payment for \$4,060.00 on June 26, 2023, \$8,120.00 on June 30, 2023, \$596.00 on June 30, 2023, and now \$4,060.00 on July 13, 2023. In this seventeen (17) day period, Debtor has \$16,836.00 of cash available to cure the defaults.

On Supplemental Schedule I, filed on February 8, 2023, (Dckt. 43) Debtor states under penalty of perjury of having monthly take-home income of \$8,845.00. On Supplemental Schedule J, Debtor states having monthly projected disposable income of \$4,144. *Id.*

It appears to be a financial impossibility for Debtor to have \$16,836.00 to pay the Trustee at the end of June and the first of July 2023.

At hearing, **XXXXXXX**

## DISCUSSION

### Delinquent

Debtor is \$12,180.00 delinquent in plan payments, which represents multiple months of the \$4,655.11 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

~~Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.~~

~~Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

# FINAL RULINGS

28. [23-21501](#)-E-13

**RICHARD CRUZ**  
**Joseph Canning**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
6-13-23 [[25](#)]

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor , Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 14 and 15, 2023. The court computes that 34 and 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on June 8, 2023.

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is denied without prejudice.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Armando Ariss Gonzalez and Emily Vena Gonzalez (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on July 3, 2023. Dckt. 28. Debtor states they have filed a modified Plan after experiencing substantial fluctuations in income and is current under the terms of the modified Plan.

#### **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan on July 6, 2023 and requests the court confirm the modified Plan. Dckt. 33, 40. The court has reviewed the Motion to Modify the Plan, the Declaration, and the Exhibit in support filed by Debtor. Dckt. 35, 36. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice. <sup>FN.1.</sup>

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FN. 1. The court notes that the Trustee has filed an opposition to the Motion to Confirm. It appears that the opposition may be based on a clerical error and a workable monetary adjustment in the plan payment.

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The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
-----

The Chapter 13 Trustee, David Cusick (“Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 38, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

-----

The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.



**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The hearing on the Motion to Dismiss is continued to 2:00 p.m. on August 22, 2023, to be heard in conjunction with the hearing on Debtor’s Motion to Confirm the Second Amended Plan.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Nadia Zhiry (“Debtor”) has failed to file a new plan.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on July 3, 2023. Dckt. 272. Debtor states an amended plan will be filed. Debtor awaits the discharge of the Receiver in a civil action in Superior Court. *Id.* Debtor then plans to file a motion for final payment to Debtor’s contractor, which will allow for the increase in payments to satisfy the claims in the Chapter 13 case, specifically the non-dischargeable claim of the City of Sacramento, California. *Id.*

### **Failure to Provide Evidence**

Debtor’s counsel filed an Opposition making several factual assertions. However, no declaration of the Debtor was filed to support those assertions or authenticate the exhibits provided. The court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

## **FILING OF SECOND AMENDED PLAN**

Debtor filed a Second Amended Plan and Motion to Confirm on July 12, 2023. Dckts. 285, 289. The court has reviewed the Motion to Confirm the Second Amended Plan and the Declaration in support filed by Debtor. Dckts. 287, 289. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

The Court continues the hearing on the Motion to Dismiss for consideration in conjunction with Debtor's Motion to Confirm the proposed Second Amended Plan in this Bankruptcy Case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to **2:00 p.m. on August 22, 2023**, to be heard in conjunction with the hearing on Debtor's Motion to Confirm the Second Amended Plan.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 16, 2023. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, April Bryant (“Debtor”), is in default with respect to the plan.

## **DISCUSSION**

### **Delinquent**

Debtor is \$624.00 delinquent in plan payments, which represents multiple months of the \$208.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, counsel for Debtor reports that the TFS payment to cure is in process. The Trustee concurred in a request for a continuance.

### **Trustee's Withdrawal**

Trustee, having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on July 12, 2023, Dckt. 88; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with Debtor's Response, Dckt. 83, the Ex Parte Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 88, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Janice Alvarez (“Debtor”) is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$300.00 delinquent in plan payments, which represents multiple months of the \$150.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

35. [22-20228-E-13](#)  
[DPC-3](#)

**JUAN GRANADOZ**  
**Linda Deos**

**MOTION TO DISMISS CASE**  
**6-21-23 [45]**

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Juan Granadoz (“Debtor”) is delinquent in plan payments.

## DISCUSSION

## Delinquent

Debtor is \$5,726.00 delinquent in plan payments, which represents multiple months of the \$2,198.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

36. <a href="#">19-26529-E-13</a> <a href="#">DPC-5</a>	PAUL WILSON AND JESSICA MAINVOILLE-WILSON Matthew DeCaminda	CONTINUED MOTION TO DISMISS CASE 5-22-23 [ <a href="#">144</a> ]
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**Final Ruling: No appearance at the July 19, 2023 Hearing is required.**

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 22, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is denied without prejudice.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Paul Wilson and Jessica Lucia Mainvoille-Wilson (“Debtor”), is delinquent in Plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on June 7, 2023. Dckt. 148. Debtor states they will be filing a modified plan prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,320.00 delinquent in plan payments, which represents multiple months of the \$2,370.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.

At the hearing, the Trustee reported that a modified plan has been filed, and requested that the hearing be continued.

### **July 19, 2023 Hearing**

The Modified Plan has been filed, with the Motion to Confirm set for hearing on July 25, 2023. The Trustee has identified some corrections to be made, which corrections may be stated in the order confirming the Plan.

From the court’s preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support states personal knowledge testimony in support of the Motion to Confirm.

Given Debtor’s active prosecution of confirmation of a Plan, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

37. [23-20229-E-13](#)  
[DPC-3](#)

**DARRAL BARROW**  
**Timothy Walsh**

**MOTION TO DISMISS CASE**  
**6-21-23 [26]**

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Darral Barrow (“Debtor”), has failed to file an amended plan.
2. Debtor has failed to provide pay advices to Trustee.

## **DISCUSSION**

### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on April 14, 2023. Order, Dckt. 24. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for

the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Failure to Provide Pay Advices**

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor , Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 7 and 8, 2023. The court computes that 41 and 42 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on June 1, 2023.

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is denied without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Matt Sanchez and Esther Sanchez (“Debtor”) has failed to file an amended plan.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on June 30, 2023. Dckt. 77. Debtor states a motion to confirm Debtor’s second amended plan has been filed prior to the hearing date.

#### **FILING OF A SECOND AMENDED PLAN**

Debtor filed a Second Amended Plan and Motion to Confirm on June 23, 2023. Dckts. 68, 72. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 75. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

40. [19-25534-E-13](#)  
[DPC-1](#)

**BRIAN CARPENTER**  
**Mark Wolff**

**MOTION TO DISMISS CASE**  
**6-16-23 [27]**

**Final Ruling: No appearance at the July 19, 2023 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is denied without prejudice.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Brian Carpenter (“Debtor”) is delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on July 5, 2023. Dckt. 31. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,250.00 delinquent in plan payments, which represents multiple months of the \$435.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## FILING OF A MODIFIED PLAN

Debtor filed a Modified Plan and a Motion to Confirm on July 5, 2023. Dckt. 33, 36. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 35. The Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602. The court notes that the Motion appears to not comply with Federal Rule of Bankruptcy Procedure 9013, and it fails to state with particularity the grounds upon which the relief is requested.

While the Motion (Dckt. 33) does provide some factual allegations about Debtor's ability to pay and adjustments to income and expenses, the balance of the "grounds" consists of the following legal conclusions:

6. Debtors' modified plan meets the requirements set out in 11 U.S.C. §§ 1322(a), 1322(b), 1323(c), and 1325(a) for confirmation of chapter 13 plans.

Motion, ¶ 4; Dckt. 33.

These are not "grounds stated with particularity" but legal conclusions which the court ultimately makes after considering the grounds and evidence. Debtor must state how and what specific requirements found in the various Code sections it complies with.

Rather than continuing this hearing, the court is confident that counsel for Debtor will file a supplement to the Motion (not an amended motion) stating with particularity the grounds (not mere legal conclusions) upon which the requested relief is based.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

**IT IS FURTHER ORDERED** that Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee **on or before August 15, 2023**, a Supplement to the Motion to Confirm (DCN:WW-1) which states with particularity the grounds upon which the relief is requested, and not merely the

legal conclusion that the “modified plan meets the requirements set out in 11 U.S.C. §§ 1322(a), 1322(b), 1323(c), and 1325(a) for confirmation of chapter 13 plans.”

41. [21-21036-E-13](#)      **JEFFREY/YELENA MAYHEW**      **MOTION TO DISMISS CASE**  
[DPC-3](#)      **Peter Macaluso**      **6-16-23 [103]**

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is denied without prejudice.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew (“Debtor”) are delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on July 5, 2023. Dckt. 107. Debtor states a new plan will be filed and served on or before the hearing date.

#### **FILING OF A SECOND MODIFIED PLAN**

Debtor filed a Second Modified Plan and Motion to Confirm on July 12, 2023. Dckts. 110, 114. The court has reviewed the Motion to Confirm the [Amended / Modified] Plan and the Declaration in support filed by Debtor. Dckt. 112. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

42. [23-21156-E-13](#)  
[DPC-1](#)

**ROBIN WRIGHT**  
**Stephan Brown**

**MOTION TO DISMISS CASE**  
**6-21-23 [31]**

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:



1. The debtor, Robin Aurora Wright (“Debtor”), is delinquent in plan payments. Debtor has paid \$0.00 into the Plan.
2. Debtor failed to attend 341 meeting.

## **DISCUSSION**

### **No Plan Payments Made / Failed to Commence Plan Payments**

Debtor did not commence making plan payments and is \$1,929.51 delinquent in plan payments, which represents one month of the \$1,929.51 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

### **Failed to Appear at § 341 Meeting of Creditors**

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

-----

**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on July 12, 2023, Dckt. 87; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Response filed by Reginald Keith Nichols and Nichelle Leigh Nichols (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 87, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on July 12, 2023, Dckt. 67; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Reply filed by Sally Laura Mungwa (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 67, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

45. [18-24663](#)-E-13  
[DPC](#)-1

VIOLET GARCIA  
Julius Cherry

MOTION TO DISMISS CASE  
6-16-23 [\[34\]](#)

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
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The Chapter 13 Trustee, David Cusick (“Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

46. [20-24563](#)-E-13  
[DPC](#)-3

JOURDON SLONE  
Stephen Reynolds

MOTION TO DISMISS CASE  
6-16-23 [\[57\]](#)

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Jourdon Slone (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,088.02 delinquent in plan payments, which represents multiple months of the \$279.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is denied without prejudice.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Rebecca Mann (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on June 22, 2023. Dckt. 32. Debtor states they have filed a new Chapter 13 Plan which has been set for hearing on August 8, 2023.

#### **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on June 22, 2023. Dckts. 24, 27. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 26. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

-----

**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on July 12, 2023, Dckt. 32; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Tammy Tuyet Lam (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 32, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.



**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

-----

**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on July 12, 2023, Dckt. 75; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Response filed by Forrest Sylvan Gardens (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 75, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Larry Francis Stewart and Sena Ann Stewart (“Debtor”), is delinquent in Plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,540.00 delinquent in plan payments, which represents multiple months of the \$1,270.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

51. [23-20189](#)-E-13  
[DPC-2](#)

**GREGORY/CHO FRENCH**  
**Patricia Wilson**

**MOTION TO DISMISS CASE**  
**6-21-23 [36]**

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<b>The Motion to Dismiss is denied without prejudice.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Gregory Wayne French and Cho Yon French (“Debtor”), is causing an unreasonable delay that is prejudicial to creditors because they have no plan pending in this case and have filed several previous cases, two of which were Chapter 13 cases that were dismissed prior to discharge.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on July 6, 2023. Dckt. 40. Debtor states that an amended plan and motion to confirm “should be filed on July 6, 2023 with a hearing on that motion scheduled for August 22, 2023” and requests that the court continue the hearing on Trustee’s Motion to Dismiss so it can be heard at that same hearing. *Id.*

## **FILING OF AMENDED PLAN**

Debtor filed an Amended Plan and Motion to Confirm on July 11, 2023. Dckt. 43, 44. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 47. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Ricardo J Cortez (“Debtor”), is delinquent in Plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,122.75 delinquent in plan payments, which represents more than one month of the \$2,065.85 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

53. [19-22991-E-7](#)  
[DPC-1](#)

**TASHA ROBINSON**  
**Diana Cavanaugh**

**CONTINUED MOTION TO DISMISS**  
**CASE**  
**5-15-23 [60]**

**CASE CONVERTED 6/29/23**

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on May 15, 2023. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is denied without prejudice as moot.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Tasha Robinson (“Debtor”), is delinquent in Plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on June 7, 2023. Dckt. 64. Debtor states they intend to convert this case under Chapter 7 prior to the hearing date.

## DISCUSSION

### Delinquent

Debtor is \$1,659.00 delinquent in plan payments, which represents multiple months of the \$332.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Upon the court's review of the docket, a notice of conversion has not yet been filed. Based on the foregoing, cause exists to dismiss this case.

### June 21, 2023 Hearing

Counsel for the Debtor reported that the elect to convert will be filed shortly and the Trustee concurred in the request for a continuance.

### Case Converted

Debtor filed a Notice of Conversion on June 30, 2023, converting the case to a proceeding under Chapter 7. Dckt. 72. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on June 30, 2023. *McFadden*, 37 B.R. at 521.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice as moot.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 16, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Robin Arlene Harland and Thomas Scott Harland (“Debtor”), is delinquent in the Plan.

## DISCUSSION

### Delinquent

Debtor is \$3,600.00 delinquent in plan payments, which represents over one month of the \$2,550.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.



The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

55. <a href="#">22-23140</a> -E-13 <a href="#">DPC-2</a>	<b>ALICE JORDAN</b> Bruce Dwiggins	<b>MOTION TO DISMISS CASE</b> 6-21-23 <a href="#">[27]</a>
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**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
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The Chapter 13 Trustee, David Cusick (“Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

56. <a href="#">23-20542</a> -E-13 <a href="#">DPC-1</a>	<b>SHARON JACKSON</b> Marc Caraska	<b>MOTION TO DISMISS CASE</b> 6-21-23 <a href="#">[39]</a>
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**Final Ruling:** No appearance at the July 19, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is denied without prejudice.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Sharon Ann Jackson (“Debtor”), having the Plan denied confirmation on May 18, 2023, has no new plan filed to date.
2. Conversion to Chapter 7 is not in the best interest of the creditors or the estate.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on July 7, 2023. Dckt. 43. Debtor states they have filed a proposed First Amended Plan and a confirmation hearing has been scheduled.

## **FILING OF AMENDED PLAN**

Debtor filed an Amended Plan and Motion to Confirm on July 5, 2023. Dckts. 45, 48. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. xx. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

DEBTOR DISMISSED: 6/13/23

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on June 14, 2023. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay fees.

<b>The Order to Show Cause is discharged as moot.</b>
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The court having dismissed this bankruptcy case by prior order filed on June 13, 2023 (Dckt. 19), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

**Final Ruling:** No appearance at the July 19, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, person requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is denied without prejudice.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Jeffrey Jerome Harrison and Nikea Latrese Harrison (“Debtor”), is delinquent in Plan payments.

Debtor filed a Notice of Conversion on July 12, 2023, however, converting the case to a proceeding under Chapter 7. Dckt. 66. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on July 12, 2023. *McFadden*, 37 B.R. at 521.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice as moot.